

**THE LABOR COMMISSION
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, January 27, 2010 - 12:15 A.M.
Seagull Room, State Capital Complex
Salt Lake City, Utah**

The following Advisory Council members were in attendance:

Ralph Astorga, President, USWA Local 392
Dawn Atkin, Esq.
Thomas Bingham, President, Utah Manufacturers Association
David Bird, Esq.
Brandt Goble, Painters and Tapers Local 77
Reo Castleton, SL County Fire Department
James V. Olsen, President, Utah Food Industry Association
Susan Kelly, Liberty Mutual
Jeff Rowley, Risk Manager, Salt Lake County
Brad Tibbitts, Utah State Insurance Department
Dennis Lloyd for Ray Pickup, Workers Compensation Fund
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter
Senator Karen Mayne
Phil Shell for Brian Kelm, Esq.

The following Advisory Council members were excused:

Edward Holmes, M.D., RMCOEH
Brian Kelm, Esq.

Legislative Liaison Absent:

Rep. Mike Morley

Others Present:

Sherrie Hayashi, Commissioner
Alan Hennebold, Deputy Commissioner
Ron Dressler, Acting Director / Policy Manager, Labor Commission
Sara Danielson, Administrative Assistant, Labor Commission
David Lamb, Administration Director, Labor Commission
Brent Low, Media One
Kelly Roberts, Media One
Senator Butters
Maggie Karpuk, NCCI
Rachel Golden, U.A.J.

WELCOME

Welcome – Commissioner Hayashi brought the meeting to order at 12:15 p.m.

1. Miscellaneous Business - Commissioner Hayashi

Commissioner Hayashi reviewed the Executive Order that no food purchases be made for the remainder of the fiscal year.

Jeff Rowley moved to approve the minutes of the October 7, 2009 meeting. **Dawn Atkin** seconded the motion which passed unanimously.

Commissioner Hayashi explained that we have new recording equipment. This will allow us to place the actual meeting on line after the fact.

Commissioner Hayashi informed the Council that Larry Bunkall is no longer with the Commission and that Ron Dressler is Acting Director. Interviews for the position of Division Director of the Industrial Accident's division will be held beginning next week, with a decision soon thereafter.

Senator Karen Mayne asked that **Senator Buttars** be allowed to address the Council regarding a bill that he will be proposing. **Senator Buttars** stated that when SB108 was passed in 2007, intent language was left out. He asked that the council review the legislative committee hearings on the internet and see that intent language was also supposed to be part of the bill. (Handout provided with instruction as to how to do this.) SB108 deals with the change from 3 years to incur and submit medical care billings to 1 year. **Phil Shell** explained that with the passage of SB108, injured workers must incur and submit their medical bills within one year. The bill is applied to case 2007 and future, but not retroactively. The intent was that the bill would be applied retroactively to 1988 and forward. Discussion was held. **Commissioner Hayashi** suggested that a sub-committee of the council be created to help on this issue. **Commissioner Hayashi** stated that she would get back with Senator Buttars after review of the matter.

2. Labor Commission Budget/Premium Surcharge Funds

David Lamb distributed a several handouts regarding the Labor Commission budget and the proposed cuts for the remainder of fiscal year 2010 and fiscal year 2011. **Commissioner Hayashi** explained how the Commission has been able to use federal funds and UEF funds to cover some of the budget cuts as well as careful spending. **Commissioner Hayashi** also reviewed recommended Legislative requests regarding the IARA funds for fiscal year 2011 of 1.8 million. Discussion was held.

3. Discuss Merrill Decision

Alan Hennebold reviewed the history of the Merrill Decisions and explained the different groups affected: 1) Payments made after 1st decision issued – no offset; 2) Payments before the court rule – parties actively negotiated – no payment / claimant acquiesced – payment is required; 3) Inactive or unspecified – lumpsum / deceased / settled without finding of PTD – no payment. **Ron Dressler** explained what a review of ERF cases has found regarding the Merrill Decision. There a total of 296 cases affected by this decision; 203 cases have been determined to receive the offset refund; 85 cases have been determined to receive no offset refund; and 8 cases are in need of further review. The amount to be reimbursed plus interest for the 203 cases is \$8,525,470.96. (Handout provided) Prospective application is under review by the actuary. **Dennis Lloyd** asked how interest was calculated. **Mr. Dressler** explained that it has been calculated as of the date the payment was due not the date of the Merrill Decision. **Mr. Hennebold** stated that legislation has been drafted by Rep. Harper to strike the offset to Social Security Retirement only. Our Legislative liaisons have opened bill files to create “safe harbors” in the event that Rep. Harper's bill is not a good bill.

4. Review WC Legislation for the 2010 Legislative General Session

HJR 10 proposes the legislature's strong support of state run workers compensation systems and opposes a federal system. **Dennis Lloyd** explained that history of this resolution. He stated that this has to do with Sen. Baca's bill in Congress to create a federal study commission on workers compensation systems.

Brent Low from Media One, requested support for a proposed bill (not drafted) that would be similar to HB308 which exempted Motor Carriers from the Workers Compensation System. The new bill would be for newspaper carriers, who are part-time and over the age of 18. Discussion was held. The current system allows for exemption from the WC system for independent contractors. However, concern was raised as to

whether or not the newspaper carriers were truly independent contractors. **Commissioner Hayashi** recommended a meeting between Media One and Ron Dressler regarding this issue.

Dawn Atkin passed out a proposal for the council to consider, prepared by Richard Burke, for possible legislative action next session regarding the matter of injured workers who are denied WC benefits and then their private insurance also denies them coverage because the accident happened at work. This is for discussion at the next council meeting.

5. Other Business

Ron Dressler stated that tentative plans are being made for a WC Seminar in the Fall, possibly in September. As plans are made more information will be provided.

Commissioner Hayashi discussed the dates for the council meetings in 2010. The dates suggested are the 2nd Wednesday of the month; April 14, July 14 and October 13. Comments were made that July might be difficult, but the dates would remain as set.

Brad Tibbits stated that the Department of Insurance had run into a problem with setting the RVS schedules for insurance carriers. He stated that after a review, the Labor Commission's Medical Fee Guidelines are developed in a very similar way to what the Dept. of Insurance needs. He asked if the Council would have any problems with the Dept. of Insurance using the Commission's fee schedule. Discussion was had regarding assistance (financial or otherwise) in developing the fee schedule. There was also concern that the Labor Commission should not have to deal with questions regarding how the Dept. of Insurance applies the fees schedule.

Commissioner Hayashi adjourned the meeting at 1:45 p.m.